

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER OF:

[REDACTED]
DEAR [REDACTED]

Reg. No.: 201276656
Issue No.: 2009
Case No.: [REDACTED]
Hearing Date: January 9, 2013
County: Wayne DHS (17)

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 following Claimant's request for a hearing. After due notice, an in-person hearing was conducted on January 9, 2013, from Detroit, Michigan. Participants included the above-named claimant. [REDACTED] testified and appeared as Claimant's authorized hearing representative. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Specialist, and [REDACTED], Specialist.

ISSUE

The issue is whether DHS properly denied Claimant's application for Medical Assistance (MA) on the basis that Claimant is not a disabled individual.

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On 4/27/12, Claimant applied for MA benefits including retroactive MA benefits from 3/2012.
2. Claimant's only basis for MA benefits was as a disabled individual.
3. On 7/19/12, the Medical Review Team (MRT) determined that Claimant was not a disabled individual (see Exhibits 6-7).
4. On 7/23/12, DHS denied Claimant's application for MA benefits and mailed a Notice of Case Action (Exhibits 4-5) informing Claimant of the denial.

5. On 8/4/12, Claimant requested a hearing (see Exhibit 2) to dispute the denial of MA benefits.
6. On 10/31/12, the State Hearing Review Team (SHRT) determined that Claimant was not a disabled individual (see Exhibit 26), in part, by determining that Claimant is capable of performing her past relevant work as a dental assistant.
7. As of the date of the administrative hearing, Claimant was a [REDACTED] year old female with a height of 5'8" and weight of 115 pounds.
8. Claimant has no relevant history of tobacco, alcohol or illegal substance abuse.
9. Claimant's highest education year completed was the 12th grade.
10. As of the date of the administrative hearing, Claimant had no health coverage but was part of a program which offered her discounted prescriptions.
11. Claimant alleged that she is disabled based on impairments and issues including: hearing loss, heart problems and rheumatoid arthritis.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). DHS (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, et seq., and MCL 400.105. Department policies are found in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM) and the Reference Tables Manual (RFT).

MA provides medical assistance to individuals and families who meet financial and nonfinancial eligibility factors. The goal of the MA program is to ensure that essential health care services are made available to those who otherwise would not have financial resources to purchase them.

The Medicaid program is comprised of several sub-programs which fall under one of two categories; one category is FIP-related and the second category is SSI-related. BEM 105 at 1. To receive MA under an SSI-related category, the person must be aged (65 or older), blind, disabled, entitled to Medicare or formerly blind or disabled. *Id.* Families with dependent children, caretaker relatives of dependent children, persons under age 21 and pregnant, or recently pregnant, women receive MA under FIP-related categories. *Id.* AMP is an MA program available to persons not eligible for Medicaid through the SSI-related or FIP-related categories though DHS does always offer the program to applicants. It was not disputed that Claimant's only potential category for Medicaid eligibility would be as a disabled individual.

Disability for purposes of MA benefits is established if one of the following circumstances applies (see BEM 260 at 1-2):

- by death (for the month of death);
- the applicant receives Supplemental Security Income (SSI) benefits;
- SSI benefits were recently terminated due to financial factors;
- the applicant receives Retirement Survivors and Disability Insurance (RSDI) on the basis of being disabled; or
- RSDI eligibility is established following denial of the MA benefit application (under certain circumstances).

There was no evidence that any of the above circumstances apply to Claimant. Accordingly, Claimant may not be considered for Medicaid eligibility without undergoing a medical review process which determines whether Claimant is a disabled individual. *Id.* at 2.

Generally, state agencies such as DHS must use the same definition of SSI disability as found in the federal regulations. 42 CFR 435.540(a). Disability is federally defined as the inability to do any substantial gainful activity (SGA) by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. 20 CFR 416.905. A functionally identical definition of disability is found under DHS regulations. BEM 260 at 8.

Substantial gainful activity means a person does the following:

- Performs significant duties, and
- Does them for a reasonable length of time, and
- Does a job normally done for pay or profit. *Id.* at 9.

Significant duties are duties used to do a job or run a business. *Id.* They must also have a degree of economic value. *Id.* The ability to run a household or take care of oneself does not, on its own, constitute substantial gainful activity. *Id.*

The person claiming a physical or mental disability has the burden to establish a disability through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or ability to reason and make appropriate mental adjustments, if a mental disability is alleged. 20 CFR 413.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a).

Federal regulations describe a sequential five step process that is to be followed in determining whether a person is disabled. 20 CFR 416.920. If there is no finding of disability or lack of disability at each step, the process moves to the next step. 20 CFR 416.920 (a)(4).

The first step in the process considers a person's current work activity. 20 CFR 416.920 (a)(4)(i). A person who is earning more than a certain monthly amount is ordinarily considered to be engaging in SGA. The monthly amount depends on whether a person is statutorily blind or not. The 2012 monthly income limit considered SGA for non-blind individuals is \$1,010.

In the present case, Claimant denied having any employment since the date of the MA application; no evidence was submitted to contradict Claimant's testimony. Without ongoing employment, it can only be concluded that Claimant is not performing SGA. It is found that Claimant is not performing SGA; accordingly, the disability analysis may proceed to step two.

The second step in the disability evaluation is to determine whether a severe medically determinable physical or mental impairment exists to meet the 12 month duration requirement. 20 CFR 416.920 (a)(4)(ii). The impairments may be combined to meet the severity requirement. If a severe impairment is not found, then a person is deemed not disabled. *Id.*

The impairments must significantly limit a person's basic work activities. 20 CFR 416.920 (a)(5)(c). "Basic work activities" refers to the abilities and aptitudes necessary to do most jobs. *Id.* Examples of basic work activities include:

- physical functions (e.g. walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling)
- capacities for seeing, hearing, and speaking, understanding; carrying out, and remembering simple instructions
- use of judgment
- responding appropriately to supervision, co-workers and usual work situations; and/or
- dealing with changes in a routine work setting.

Generally, federal courts have imposed a de minimus standard upon claimants to establish the existence of a severe impairment. *Grogan v. Barnhart*, 399 F.3d 1257, 1263 (10th Cir. 2005); *Hinkle v. Apfel*, 132 F.3d 1349, 1352 (10th Cir. 1997). *Higgs v Bowen*, 880 F.2d 860, 862 (6th Cir. 1988). Similarly, Social Security Ruling 85-28 has been interpreted so that a claim may be denied at step two for lack of a severe impairment only when the medical evidence establishes a slight abnormality or combination of slight abnormalities that would have no more than a minimal effect on an individual's ability to work even if the individual's age, education, or work experience were specifically considered. *Barrientos v. Secretary of Health and Human Servs.*, 820 F.2d 1, 2 (1st Cir. 1987). Social Security Ruling 85-28 has been clarified so that the step two severity requirement is intended "to do no more than screen out groundless claims." *McDonald v. Secretary of Health and Human Servs.*, 795 F.2d 1118, 1124 (1st Cir. 1986).

SSA specifically notes that age, education, and work experience are not considered at the second step of the disability analysis. 20 CFR 416.920 (5)(c). In determining

whether Claimant's impairments amount to a severe impairment, all other relevant evidence may be considered. The analysis will begin with the submitted medical documentation.

A Medical Social Questionnaire (Exhibits 21-22) dated [REDACTED] was presented. The form was completed by a person with a job title of "representative". Claimant's only previous listed hospitalization was from [REDACTED] concerning a seizure and head injury.

A Facility Admission Notice (Exhibit 10) was presented. The form noted a hospital admission on [REDACTED] with a same day discharge. Hospital documents (Exhibits 15-18) from the hospital encounter were presented. It was noted that Claimant suffered a tonic-clonic seizure and fell on her face. It was noted that Claimant had an abrasion on her lower lip and laceration on her nose. The injuries were described as superficial (see Exhibit 16) and no sutures were required. It was noted that a CAT scan of Claimant's head was performed; the results were noted as unremarkable. It was also noted that x-rays established a fracture of the nasal bone.

A Medical Examination Report (Exhibits 19-20) was presented. The form was completed by Claimant's treating physician on [REDACTED]. It was noted that the physician first treated Claimant on [REDACTED] and last examined Claimant on [REDACTED] 2. The physician provided multiple diagnoses, though none were legible. It was noted that Claimant was restricted to standing and/or walking less than 2 hours in an 8 hour day. It was noted that Claimant could occasionally lift 10 pounds and never more than 10 pounds. The physician appeared to indicate that Claimant was not capable of performing any repetitive actions with her hands and arms.

A Medical Examination Report (Exhibits 8-9) was presented. The form was completed by Claimant's treating physician on [REDACTED]. It was noted that the physician first treated Claimant on [REDACTED] and last examined Claimant on [REDACTED]. The physician provided diagnoses of: lower back pain, rheumatoid arthritis/degenerative joint disease, joint pain and muscle pain. It was also noted that Claimant had anxiety, nervousness and depression. An impression was given that Claimant's condition was stable. It was noted that Claimant can meet household needs. It was noted that Claimant had no physical limitations. It was noted that Claimant could occasionally lift less than 10 pounds, but never more than 20 pounds. It was noted that Claimant had no restrictions in repetitive use of her hands and arms. The physician did not note any standing, walking or sitting restrictions for Claimant. It was noted that Claimant had no mental limitations. It was noted that Claimant was taking the following prescriptions: Xanax, Lorcet and Ultram.

Claimant's primary care physician noted that Claimant had some psychological impairments. It was also established that Claimant took at least one prescription for the impairments. However, Claimant's treating physician also noted that Claimant had no mental impairments. Based on the presented evidence, it is found that Claimant has no non-exertional impairments to performing basic work activities.

It was established that Claimant had a seizure in 3/2012 resulting in a fall. The evidence established that Claimant suffered no injuries in the fall relevant to disability. The fact that Claimant had a seizure is concerning, but Claimant testified that she has not since had a seizure. An isolated seizure is not compelling evidence that Claimant is impaired from performing basic work activities.

It was noted at the outset of the hearing, that Claimant requires the use of a hearing aid due to a disease that has affected her since birth. There was no medical evidence concerning Claimant's hearing. Thus, it cannot be found to be an impairment to performing basic work activities.

There was a reference to mitral valve prolapse, a known heart condition, in the medical records. However, there was no evidence that the problem impaired Claimant's work abilities.

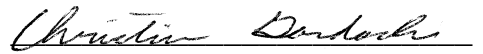
Claimant's treating physician diagnosed Claimant with several exertional impairments including rheumatoid arthritis and lower back pain. On [REDACTED], the physician stated that Claimant was exceptionally limited included in walking, sitting, standing, repetitive arm and leg movements and lifting. One month later, Claimant's only restriction was to not lift or carry over 20 pounds. This is debatably a significant impairment to performing basic work activities. However, Claimant had no other impairments. Based on the presented evidence, it is found that Claimant failed to establish a significant impairment to performing basic work activities.

It should be noted that even if Claimant was found to have a significant impairment to performing basic work activities, she would not meet a SSA listing and would be found to be capable of performing her past relevant employment.

Based on the presented evidence, it is found that Claimant is not a disabled individual. Accordingly, the DHS denial of MA benefits was proper.

DECISION AND ORDER

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, finds that DHS properly denied Claimant's MA benefit application dated 4/27/12 based on a determination that Claimant is not disabled. The actions taken by DHS are AFFIRMED.


Christian Gardocki
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: January 18, 2013

Date Mailed: January 18, 2013

NOTICE: Michigan Administrative Hearing System (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. MAHS will not order a rehearing or reconsideration on the Department's motion where the final decision cannot be implemented within 90 days of the filing of the original request. (60 days for FAP cases)

The Claimant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt date of the rehearing decision.

Claimant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the claimant:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail at
Michigan Administrative Hearings
Reconsideration/Rehearing Request
P. O. Box 30639
Lansing, Michigan 48909-07322

CG/hw

cc:

